

**MINUTES OF THE COURT OF APPEAL  
STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT**

**June 24, 1999**

DIVISION ONE

B126420      Montgomery                      (Not for Publication)  
                 v.  
                 Payton  
                 Estate of Juanita w. Shell, deceased.

The orders are affirmed. The estate is entitled to its costs of appeal.

Vogel (Miriam A.), J.

We concur:    Spencer, P.J.  
                         Ortega, J.

B119670      Daks                                      (Certified for Publication)  
                 v.  
                 Franchise Tax Board

The judgment is affirmed. The Franchise Tax Board is entitled to its costs of appeal.

Vogel (Miriam A.), J.

We concur:    Spencer, P.J.  
                         Ortega, J.

B120444      Genz Development, Inc.                      (Not for Publication)  
                 v.  
                 Fire Insurance Exchange

The judgment is affirmed.

Vogel (Miriam A.), J.

We concur:    Spencer, P.J.  
                         Ortega, J.

DIVISION ONE (Continued)

B101396      Conservatorship of the Person and      (Not for Publication)  
Estate of Bessie Mae McHenry  
v.  
Crowell, as Public Guardian, etc.  
Budget Finance Company

The order of February 2, 1996 “[that Bessie] both lacked the capacity to understand and appreciate the import of the deed given to . . . Beverly Cunningham, and also that Beverly Cunningham unduly influenced [Bessie] in procuring [the quitclaim] deed” is reversed insofar as it affects Budget’s rights, and the cause is remanded to the trial court with directions to set a schedule for discovery, briefing, and a hearing to determine these issues anew vis-à-vis Budget’s deed of trust including (if the issue remains relevant) whether Budget is a bona fide encumbrancer. Budget is awarded its costs of appeal.

Vogel (Miriam A.), J.

We concur:    Spencer, P.J.  
                         Ortega, J.

DIVISION TWO

Court convened at 9:00 A.M.

Present: Boren, P.J., Nott, J., Zebrowski, J., Mallano, J. (Assigned), and G. Villanueva, Deputy Clerk.

B124435      People  
v.  
Arevalo

Merits:  
Argued by Sheila Keiter for appellant and by Stephanie Miyoshi, deputy attorney general for respondents. Cause submitted.

DIVISION TWO (Continued)

B123513     People  
              v.  
              Brooks

Merits:  
Argued by Allen Weinberg for appellant and by William Harter, deputy attorney general, for respondent. Cause submitted.

B126510     Hardwick  
              v.  
              Lipson

Merits:  
Argued by Christie Webb for appellant and by Violet Fiacco for respondent. Cause submitted.

B126642     Sherwin Wolf  
              v.  
              Robert Wolf  
              (Estate of Wolf, r.p.i.)

Merits:  
Argued by Martin Shapero for appellant, by Mane Sallus for respondent Robert Wolf and Burton Popkoff for respondent Estate of Wolf. Cause submitted.

B122547     Noble  
              v.  
              IT Corporation

Merits:  
Argued by Douglas Perlman for appellant and by Kirk Jenkins for respondent. Cause submitted.

Mallano, J. (Assigned) leaves the bench.

DIVISION TWO (Continued)

B127637 Kathleen Kenny  
v.  
County of L.A.

Merits:

Argued by Kathleen Kenny and Arthur Starz appellants in propria persona, by Adrienne Byers, deputy county counsel, for respondent County of Los Angeles and Terry Fujimoto, deputy attorney general, for respondent California Coastal Commission. Cause submitted.

Court recessed.

The Court reconvened at 1:00 P.M.

Present: Boren, P.J., Nott, J., Zebrowski, J., Mallano, J. (Assigned), and G. Villanueva, Deputy Clerk.

B120577 People  
v.  
Sims

Merits:

Argued by Cara DeVito for appellant and by Joseph Lee, deputy attorney general, for respondent. Cause submitted.

B131539 People  
v.  
Superior Court L.A. Co.  
(Perez, r.p.i.)

Merits:

Argued by Brent Ferreira, deputy district attorney, for petitioner and by Jack Weedin, deputy public defender, for real party in interest. Cause submitted.

DIVISION TWO (Continued)

B127783     Los Angeles County Dept. of Children and Family Services  
              v.  
              Patricia W.

Merits:

Argued by Michael Salazar for appellant and by Jill Regal, deputy county counsel, for respondent. Cause submitted.

B125056     Theresa Horne  
              v.  
              Stanley Horne

Merits:

Argued by Jeffrey Doeringer for appellant and by Thomas Lewis for respondent. Cause submitted.

B126356     Ziegler  
              v.  
              City of South Pasadena

Merits:

Argued by Diane Marchant for appellant and by Debra Bray for respondent. Cause submitted.

Boren, P.J. leaves the bench.

B127050     DiLoreto  
              v.  
              Downey Unified School District

Merits:

Argued by Patrick Manshardt for appellant and by John Allen for respondent. Cause submitted.

Court adjourned.

## DIVISION TWO (Continued)

B122965      People                                  (Not for Publication)  
v.  
Steven C. Scott

The Court:

The true finding on the prior conviction for assault in violation of Penal Code section 245, subdivision (a)(1) alleged within the meaning of Penal Code sections 1170.12, subdivisions (a) through (d), and 667, subdivisions(b) through (i), is reversed and the matter is remanded for a new trial limited to the issue of that prior conviction allegation in accordance with the views expressed herein. The judgment is modified to reflect four, rather than five, prior prison term enhancements pursuant to Penal Code section 667.5, subdivision (b), each of which was stricken. The judgment is further modified to provide for a \$1,000 parole revocation fine pursuant to Penal Code section 120.45, that fine to be suspended unless appellant violates parole, a \$50 criminal laboratory analysis fee pursuant to Health and Safety Code section 11372.5, and state penalty assessment of \$50 and a county penalty assessment of \$35. The abstract of judgment is to be corrected to reflect these modifications. In all other respects, the judgment is affirmed.

Nott, Acting P.J., Zebrowski, J., Mallano, J. (Assigned)

B092745 MCEG Virgin Vision, LTD. (Not for Publication)  
v.  
The Samuel Goldwyn Company

The judgment is affirmed. The order awarding attorney fees is affirmed in part and reversed in part, with directions to modify it as provided in this decision. Plaintiff shall recover costs.

Mallano, J. (Assigned)

I concur: Nott, Acting P.J.  
I concur: Zebrowski, J. (Opinion)

## DIVISION TWO (Continued)

[illegible]

The Court:

The judgment is modified to reflect 138 days of conduct credit and a total of 415 days of presentence credit , and reflect a parole revocation fine of \$200 pursuant to Penal Code section 1202.45. The abstract of judgment is to Penal Code section 1202.45. The abstract of judgment is to be amended to show the modified award of conduct credit and presentence credit, a restitution fine of \$200, and a parole revocation fine of \$200. As modified , the judgment is affirmed.

Boren, P.J., Zebrowski, J., Mallano, J (Assigned)

B121936      People                                  (Not for Publication)  
v.  
Jose Angel Miranda

The Judgment is modified to reflect a \$200 parole restitution fine pursuant to Penal Code section 1202.45, to be suspended unless appellant's parole is revoked, and penalty assessments of \$50 pursuant to Penal Code section 1464 and \$35 pursuant to Government Code section 76000. As so modified, the judgment is affirmed. The superior court shall prepare and transmit to the Department of Corrections an amended abstract of judgment reflecting the foregoing modifications, and also the restitution and laboratory analysis fines previously imposed pursuant to Penal Code section 1202.4, subdivision (b) and Health and Safety Code section 11372.5, subdivision (a), respectively.

Mallano, J (Assigned)

We concur:   Nott, Acting P.J.  
                      Zebrowski, J.

DIVISION TWO (Continued)

B124899      Mitchell Bowen      (Certified for Publication)

v.

W.C.A.B.

Florida Marlins

The decision of the Workers' Compensation Appeals Board is annulled.  
The matter is remanded for further proceedings consistent with this opinion.

Mallano, J. (Assigned)

I concur:      Nott, P.J.

I concur:      Zebrowski, J. (opinion)

DIVISION FOUR

B119271      Lehmer      (Not for Publication)

v.

City of Los Angeles, Department of Water and Power

The judgment is affirmed.

Curry, J.

We concur:    Epstein, Acting P.J.

Hastings, J.

B125681      Martinez et al.      (Not for Publication)

v.

Your Staff, Inc.

The appeal is dismissed. Costs are awarded to respondent.

Curry, J.

We concur:    Vogel (C.S.), P.J.

Hastings, J.



DIVISION FOUR (Continued)

B113034      The People      (Not for Publication)  
v.  
Sharky's Bail Bonds

The order denying appellant's motion to vacate the forfeiture of bail is reversed, and the trial court is directed to enter an order granting the motion and exonerating the bond. Costs on appeal are awarded to appellant.

Vogel (C.S.), P.J.

We concur: Hastings, J.  
Curry, J.

B122179      Graphic Technologies Corporation      (Not for Publication)  
v.  
Venkoren, Inc., et al.

The order is affirmed.

Vogel (C.S.), P.J.

We concur: Epstein, J.  
Curry, J.

B125944      Harris      (Not for Publication)  
v.  
TRW Corporation

The appeal is dismissed.

Vogel (C.S.), P.J.

We concur: Epstein, J.  
Curry, J.

## DIVISION FOUR (Continued)

[illegible]

For the forgoing reasons, we modify the judgment to impose and suspend a fine in the sum of \$5000 pursuant to Penal Code section 1202.45 and, as modified affirm. The superior court is directed to prepare an amended abstract of judgment which reflects the fine imposed pursuant to Penal Code section 1202.4 and the fine imposed and suspended pursuant to Penal Code section 1202.45.

Hastings, J.

We concur: Vogel (C.S.), P.J.  
Epstein, J.

[illegible]

The judgment is modified to include a \$600 parole revocation fine pursuant to Penal Code section 1202.45. As so modified, the judgment is affirmed. The clerk of the superior court is directed to prepare and forward to the Department of Corrections an amended abstract of judgment reflecting this modification.

Vogel (C.S.), P.J.

We concur: Epstein, J.  
Hastings, J.

## DIVISION FOUR (Continued)

[illegible]

The judgment is modified to provide that the total credit for time spent in custody is 159 days, consisting of 139 days of actual custody plus 20 days of conduct credits. As so modified, the judgment is affirmed. The trial court is directed to send a corrected abstract of judgment to the Department of Corrections.

Vogel (C.S.), P.J.

We concur: Hastings, J.  
Curry, J.

B124448 People (Not for Publication)  
v.  
Flores

The judgment is affirmed.

Vogel (C.S.), P.J.

We concur: Epstein, J.  
Curry, J.

B125845      Los Angeles County, D.C.F.S.      (Not for Publication)  
v.  
Bobby H.

The order is reversed, and the matter is remanded to the juvenile court for further proceedings in conformity with the views expressed in this opinion.

Vogel (C.S.), P.J.

We concur: Hastings, J.  
Curry, J.

DIVISION FOUR (Continued)

B125869      Los Angeles County, D.C.F.S.      (Not for Publication)  
                 v.  
                 Charles S., Sr.

The order terminating parental rights is affirmed.

Vogel (C.S.), P.J.

We concur:   Epstein, J.  
                 Hastings, J.

B129253      In re Ernest L. Barnes      (Not for Publication)  
                 on  
                 Habeas Corpus

The order to show cause is discharged. The petition is denied.

Vogel (C.S.), P.J.

We concur:   Hastings, J.  
                 Curry, J.

B111158      Zimmerman  
                 v.  
                 Mannis

Filed order denying petition for rehearing.

June 24, 1999-Continued

DIVISION FOUR (Continued)

105118-99

The HONORABLE ROGER W. BOREN, Presiding Justice of Division Two is hereby assigned to assist the Court of Appeal, Second Appellate District, Division Four, as a Justice thereof, on the following dates:

July 15, 1999 to July 16, 1999

and until completion and disposition of all causes and matters submitted pursuant to this assignment including, if necessary by reason of a vacancy or disqualification of a Court of Appeal justice, all petitions for rehearing arising out of such causes and matters.

This assignment does not extend to any matter in which the panel would be composed of two justices pro tempore.

Dated: June 14, 1999

Ronald M. George  
Chief Justice of California and  
Chairperson of the Judicial Council

DIVISION FIVE

B130101      In re James J. et al. Minors      (Not for Publication)

Candy S.

v.

S.C.L.A.

Los Angeles County Department of Children  
and Family Services

The petition is denied.

Armstrong, J.

We concur: Turner, P.J.  
Godoy Perez, J.

## DIVISION FIVE (Continued)

B124239 People (Not for Publication)  
v.  
Omar L. Rivera

The judgment is modified to increase the amount of the section 1202.45 fine to \$1,000, suspended, and to strike the award of 276 days of presentence custody. The judgment of conviction is affirmed in all other respects. The clerk of the superior court is directed to prepare an amended abstract of judgment reflecting these modifications and to deliver the corrected abstract of judgment to the Department of Corrections.

Armstrong, J.

We concur: Turner, P.J.  
Godoy Perez, J.

105187-99

The HONORABLE EARL JOHNSON JR., Associate Justice of the Court of Appeal, Second Appellate District, Division Seven is hereby assigned to assist the Court of Appeal, Second Appellate District, Division Five, as a Justice thereof, on the following dates:

July 7, 1999

and until completion and disposition of all causes and matters submitted pursuant to this assignment including, if necessary by reason of a vacancy or disqualification of a Court of Appeal justice, all petitions for rehearing arising out of such causes and matters.

This assignment does not extend to any matter in which the panel would be composed of two justices pro tempore.

Dated: June 22, 1999

Ronald M. George  
Chief Justice of California and  
Chairperson of the Judicial Council

June 24, 1999-Continued

DIVISION SIX

B126000      The People      (Not for Publication)  
v.  
Gerlach

The judgment (order granting mandatory injunction) is affirmed. City is awarded costs on appeal.

Yegan, J.

We concur: Gilbert, Acting P.J.  
Matz, J. (Assigned)

B123700      People                                  (Certified for Publication)  
v.  
Stanley, et al.

The judgments of conviction are affirmed.

Burke, J. (Assigned)

We concur:    Gilbert, Acting P.J.  
                     Coffee, J.

B119301 People v. Trujillo (Not for Publication)

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The judgment is modified to show custody credits of 313 days and as so modified is affirmed.

Gilbert, Acting P.J.

We concur: Yegan, J.  
Coffee, J.

June 24, 1999-Continued

## DIVISION SIX (Continued)

B127751 People (Not for Publication)  
v.  
Johnson

The judgment is affirmed.

Gilbert, Acting P.J.

We concur: Yegan, J.  
Coffee, J.

B127682      In re Luis G.      (Not for Publication)  
                  Santa Barbara Co. Child Protective Services  
                  v.  
                  Jesus G.

The judgment is affirmed.

Coffee, J.

We concur:    Gilbert, Acting P.J.  
                         Yegan, J.

B122697      Jirka      (Not for Publication)  
v.  
Hoffman Family Trust

The judgment is affirmed. Appellants shall bear costs on appeal.

Gilbert, Acting P.J.

We concur: Yegan, J.  
Matz, J. (Assigned)



June 24, 1999-Continued

## DIVISION SIX (Continued)

B121938      People      (Not for Publication)  
v.  
Willis

The judgment is affirmed.

Gilbert, Acting P.J.

We concur: Yegan, J.  
Coffee, J.

B128100      People      (Not for Publication)  
v.  
King

The judgment is affirmed.

Yegan, J.

We concur:    Gilbert, Acting P.J.  
                     Coffee, J.